

## **FINAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt new Article 1.6., Section 3269 of Subchapter 4, Chapter 1 of Title 15, Division 3, of the California Code of Regulations (CCR), concerning the integrated housing of inmates.

In July, 2000, inmate Johnson, incarcerated with the CDCR, filed a complaint with the courts alleging that the Department's policy of racially segregating all inmates in reception center cells violated his rights under the Equal Protection Clause. In *Johnson vs. California*, the Federal District Courts and the Ninth Circuit Courts of Appeals found in the Department's favor. The case was elevated to the United States Supreme Court for review. The Supreme Court did not rule on the constitutionality of the Department's housing practices. Instead, the court ruled that anytime a racial classification is at issue, the "strict scrutiny" standard should be applied. The Supreme Court remanded the case back to the lower court. Application of this new standard requires CDCR officials to ensure that the policy, adopted to prevent violence by racially-based gangs, is narrowly tailored to address necessities of prison security and discipline. Once the case was remanded to the Ninth Circuit Court, the parties agreed to mediation. The CDCR entered into a mediated agreement that stipulates that CDCR will no longer use race as the sole determining factor in housing at reception centers and general population institutions.

The primary objective of this new regulation is to ensure that race will not be used as a primary determining factor in housing its inmate population. All inmates' housing assignments shall be made on the basis of available information, individual case factors, and objective criteria, to implement an integrated housing plan. It is the intent of the Department to ensure that housing practices are made consistent with the safety, security, treatment, and rehabilitative needs of the inmate, as well as the safety and security of the public, staff, and institutions.

The Department has long been proactive in its integration policies in many areas such as women's housing, institution dining rooms, dormitories, camps, classrooms, work assignments, yards, and visiting. The Department has developed a housing plan that proposes to assign inmates to housing using several criteria, rather than race, as the determinative factors. The housing plan involves an interview with the inmate, a review of the inmate's central file, and a review of all available and relevant information. This plan will be used in both reception centers and general population institutions. It is noted that female institutions currently house female inmates in an integrated manner, so the major shift in housing assignment procedures will be in the male institutions. The plan actually allows for far more versatility in housing male inmates than currently is in place. Once implemented in male institutions, the new policy will increase housing options and flexibility significantly. The Department's housing plan will use all available information to determine the inmate's eligibility for integration and will assign inmates to the first available and appropriate bed based upon their integration eligibility. This housing plan will reduce racial factors in celling decisions and promote inmate integration where safe and appropriate to do so.

Implementation of the integrated housing plan will occur over several phases. The first phase will occur upon adoption of the regulations in 2007; the Department will update the authorized computer tracking system to include coding that will be used to identify each inmate's eligibility to integrate. Integrated Housing Codes (IHC) for inmates will be assigned at reception centers during intake, and during initial, annual, and other classification committee meetings at general population institutions. On January 1, 2008, actual implementation of the integrated housing plan will commence at designated facilities such as reception centers. On January 1, 2009, the integrated housing plan will begin to be implemented simultaneously at all remaining general population institutions and reception centers, over a period of time.

The Department has reviewed the integrated housing plans of other state correctional agencies. Integration in other states has assisted in the management of gangs and disruptive groups, reduced violence, increased housing options, and reduced racial tension. Integration in other states has also assisted with breaking down prejudicial barriers, perceptions and attitudes, promoting increased tolerance of others, and reflecting community norms.

The integrated housing plan was designed with an overarching strategy for safe implementation. The plan does not call for forced integration and provides viable options for responding to non-compliance, such as Rules Violations Reports and alternative housing placement. Inmates who attempt to manipulate the policy, such as becoming violent in order to get a restricted IHC, will be charged with the appropriate rules violation and, if appropriate, will be housed in alternative and more restrictive housing. The integrated housing plan also applies to the Administrative Segregation Unit (ASU), but will not supersede safety and security concerns and/or special housing needs. Eligibility for integration will ultimately be determined by classification committee action and will involve both close scrutiny and accountability. Staff liability remains the same; the plan requires staff to exercise sound custodial discretionary decision-making using existing practices for safe housing. The integrated housing plan does not supersede existing Departmental safety and security measures. Should an institution experience a disturbance or riot that is gang or race related, the integrated housing plan will be temporarily suspended if necessary, and would result in a separation and rehousing of offenders who pose a threat to one another.

Offender non-compliance with this policy does not result in automatic placement in alternative housing. The specific behavior or act and accompanying threat to safety and security will determine if alternative housing is appropriate. The Department's expectation is that inmates who are eligible for housing in an integrated setting will do so.

Additional staffing to code inmate's and collect data is necessary to implement this program. These costs have been identified in a Finance Letter and Budget Change Proposal. However, the Department does not know how many eligible inmates will nonetheless refuse to participate. If the numbers are significant and drive demand for more expensive secure housing, the Department may seek additional funding once the program is fully implemented.

#### **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

#### **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing business, or create or expand business in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or

private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not directly affected by the internal management of State prisons; or on prison housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

**Subsections 3005(a) 3005(b) remain unchanged.**

Subsection 3005(c) is adopted to provide a new and distinct category of inmate misconduct particular to an inmate's refusal to accept a housing assignment. Once an inmate housing assignment has been determined, an inmate's refusal of that assignment will subject him to disciplinary action for obstruction of a peace officer in the performance of their duties.

**Subsection 3005(c) is renumbered to 3005(d) and remains unchanged.**

**Article 1.6., Section 3269.1 of Subchapter 4, Chapter 1 of Title 15, Division 3, of the CCR, Inmate Housing is adopted.**

**Section 3269.1 is adopted** to clarify that the Department will no longer use race as a primary determining factor in housing its inmate population, but shall make housing assignments on the basis of available documentation, individual case factors, and objective criteria. Housing assignments will be determined in a manner that will ensure the safety, security, treatment, and rehabilitative needs of the inmate are considered, as well as the safety and security of the public, staff, and institutions. The integrated housing plan will be implemented in several phases over a three year period, commencing with assigning housing codes to each inmate, then implementing integrated housing at specific facilities, and finally implementing integrated housing at all facilities statewide.

**Subsection 3269.1(a) is adopted** to specify that the Department's housing protocol will require inmates to be housed in an appropriate bed based on their assigned IHC and individual case factors.

**Subsection 3269.1(b) is adopted** to establish that an IHC will be assigned to each inmate based on case factors and an individual interview, with the IHC to be reviewed for appropriateness at least at every Annual Review, or as case factors may change. A classification committee shall assess case factors, relevant available information, and the interview(s) conducted, to determine integration eligibility and housing, clearly documenting the reason for the decision. In keeping with current classification actions and decisions, the inmate will be housed accordingly.

**Subsections 3269.1(b)(1) through 3294.3(b)(5) are adopted** to delineate the five specific IHC's that can be assigned to inmates based on inmate participation in the housing assignment process and on their individual case factors. The IHC's will identify if an inmate is racially eligible to participate in the IHP, whether they are partially restricted from participating, whether they are restricted such that they should live with only their own race, whether they are restricted temporarily by custody, or whether they are restricted by refusal.

**Subsection 3269.1(c) is adopted** to specify that the housing assignment process will commence each time an inmate arrives at a facility Receiving and Release unit, and that integrated housing assignment eligibility is based on an interview with the inmate as well as a review of the supporting documents.

**Subsection 3269.1(d) is adopted** to clarify that a new arrival at a facility, or an inmate who requires movement within a facility, will be housed in the first available and appropriate bed, taking into consideration all relevant case factors and other available information. Also, staff are to ensure that current housing policies regarding special category offenders covered under specific litigation remain in place, e.g., Coleman, Clark, Armstrong, Plata, and single-cell status, etc. In keeping with existing policies governing the safe and secure housing of such inmates, staff will ensure related housing practices take precedence over the integrated housing plan.

**Subsection 3269.1(e) is adopted** to specify that an inmate that refuses to be housed in appropriately determined housing shall be subject to the disciplinary process, with the potential to be rehoused in alternative and more restrictive housing. Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, Refusing to Accept Assigned Housing, for the specific act of Willfully Obstructing, Delaying, or Resisting a Peace Officer in the Performance of Their Duty. The inmate shall be considered for placement in more restricted housing such as an Administrative Housing Unit or a Segregated Housing Unit (SHU). The inmate may elect to participate in the IHP at any time during this process.

**Subsection 3269.1(f) is adopted** to direct staff to also impose disciplinary restrictions on inmates who refuse to participate in the IHP. A finding of guilt in a disciplinary hearing for a first offense would result in the loss of such privileges as canteen, appliances, vendor packages, telephone privileges, and personal property, for a period of up to 90 days. A finding of guilt for a second or subsequent such offense would result in a loss of those privileges for up to 180 days.

**Subsection 3269.1(g) is adopted** to clarify that a temporary suspension of the integrated housing plan in a particular housing unit can occur if deemed warranted, such as for a racial disturbance or riot. The Warden or designee of that facility shall request approval for a temporary suspension of integrated housing assignments from their mission based Associate Director, consistent with the lockdown and modified program. The integrated housing plan would be resumed upon resolution of the incident.

**Subsections 3315(a) through 3315(f)(5)(L)(2) remain unchanged.**

**Subsections 3315(f)(5)(M)(1) and (2) are adopted** to clarify that an RVR issued for Refusing to participate in the IHP is a serious rules violation, and will result in the loss of privileges such as personal canteen, appliances, vendor packages, telephone privileges, and personal property, for specified time periods for both first and second/subsequent offenses.

**Subsection 3315(g) remains unchanged.**

**Subsections 3341.5 through 3341.5(c)(9)(K) remain unchanged.**

**Subsection 3341.5(c)(9)(L) is adopted** to include Refusing to Participate in the IHP as an offense sufficient to assess a SHU Term for the specified time frames.

**Existing subsections 3341.5(c)(9)(L) through 3341.5(Cc)(9)(M) are renumbered to 3341(Cc)(9)(M) through 3341.5(c)(9)(N) respectively and remain unchanged.**

**Subsection 3341.5(c)(10) through 3341.5(c)(10)(B) remain unchanged.**

#### **PUBLIC HEARING COMMENTS:**

**Public Hearing:** Held June 18, 2007, at 9:00 at the Department of Water Resources Auditorium, Sacramento.

## **SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:**

There were no commenters present at the public hearing.

## **SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:**

### **Commenter #1:**

**Comment A:** Commenter states that no race housed in general population cells will allow a member of their own race to live in a cell with an inmate of another race. The choice to live in a cell with a member of one's own race is and always has been each inmates own choice. The only requirement should be that if someone wants to live with a member of another race, they be allowed to do so. This proposed plan will only greatly increase the number of cases of violence, serious injury, and loss of life to inmates and staff alike, and will result in numerous riots as well. Also, this will greatly increase the operation budget due to the man hours needed to process the increase of rules violation reports, incident reports, constant rehousing reports, and others.

**Accommodation:** None.

**Response A:** The Department contends that to continue to permit inmates to segregate themselves within their cells contributes to prejudicial barriers, perceptions, and attitudes, promotes increased intolerance of others, and does not reflect community values. The goal in the Johnson case was to house male and female inmates without any form of state-imposed racial segregation while also ensuring safety and security within the prisons. The Department is currently conducting a classification review of every inmate's case factors, and interviewing inmates, to assess their eligibility to be housed with a member of another race. The Department is aware that there will always be a percentage of inmates that unfortunately will not be classified as eligible to live with someone of another race.

The Department has historically used race as a major determining factor in making decisions regarding the housing of inmates, primarily at reception centers and to a great extent at general population institutions. The Department has also used geography as a determining factor when making decisions about housing inmates. For example, a Southern Hispanic typically cannot be housed with a Northern Hispanic. In fact, there are numerous factors and classification issues that must be considered when determining housing suitability. The Department disagrees that no race housed in a general population cell will allow a member of their own race to live in a cell with an inmate of another race. All Level I facilities and most Level II facilities consist of dorm/bunk housing and are fully integrated. There are a number of variations of Level III and Level IV facilities, where typically inmates have not allowed each other to be housed in the same cell with individuals of another race. There are many instances, however, where inmates would like to be housed with someone they are compatible with, but who is of another race. It should be noted that each housing unit that contains a number of cells is completely integrated.

The integrated housing plan was designed with an overarching strategy for safe implementation. The plan does not call for forced integration and provides viable options for responding to non-compliance. The integrated housing plan does not supersede existing Departmental safety and security measures. Eligibility for integration will ultimately be determined by classification committee action and will involve both close scrutiny and custodial discretionary decision-making using existing practices for safe housing. The Department does not anticipate an increase in violence. In fact, the Department contends that in time, the integrated housing of inmates will assist with breaking down prejudicial barriers, perceptions,

and attitudes, and will promote increased tolerance of others, resulting in a decrease in violence.

**Commenter #2:**

**Comment A:** Commenter states that there is a misconception that inmate's are forced to live with members of the same race. Inmates are allowed to live with individuals they are compatible with, regardless of the race. This plan would take one of the small privileges allowed inmates, and that is to select the person of their choice with whom to live. Actually, this policy is too broad, as "not housing only by race" does not translate into "all races must now integrate."

**Accommodation:** None.

**Response A:** The Department contends that inmates are not forced to live only with members of their own race when being housed by housing staff. Inmates have the ability to house with someone of their choosing; that will not change. On some Level III and Level IV yards, however, inmates currently will not tolerate those inmates who would like to live with someone of another race.

The Department disagrees that the ability to choose one's own cellmate is a privilege. Careful consideration is given by staff when housing inmates. The Department contends that the integrated housing plan is not too broad, and that it is not a mandate that all inmates must integrate. Rather, all inmates are to be evaluated to determine the extent they are eligible to be racially integrated.

**Commenter #3:**

**Comment A:** Commenter states that forced integration never works. It is difficult to comprehend what will happen in the prison system with all the politics that go on behind the wall if races are forced to be a cellmate with a person of another race and they have no desire to be integrated. There are now and have long been many instances of racial discrimination by staff in cell moves, jobs, etc., throughout the Department. Inmates should be allowed to be in a cell with another they feel safe with, and if it is a person of their own race then so be it.

**Accommodation:** None.

**Response A:** The Department does not develop its rules and policies based on inmate politics. The Department asserts that the integrated housing plan does not call for forced integration, and the plan does not supersede existing Departmental safety and security measures. The Department is not mandated to integrate the entire inmate population with respect to in-cell housing. Eligibility for integration will ultimately be determined by classification committee action and will involve close scrutiny of all of an inmate's case factors. If, however, there are no case factors that would preclude two inmates of different races from being housed together, there is the expectation they will do so without disruption to the program of the unit.

**Commenter #4:**

**Comment A:** Commenter states that prisons are already overcrowded, even with double celling, which is causing an unconstitutional environment. The double celling of inmates should not be a mandate at all, much less forcing inmates to live in gyms or dayrooms, or to be forced to live with someone of a different race. The integrated housing plan and sanctions just will not work in California prisons. As such, integrated housing of inmates will be just as unconstitutional as the current housing of inmates.

**Accommodation:** None.

**Response A:** The Department's decision to develop the integrated housing plan is due to a federal court settlement that arose from a complaint that was filed with the courts alleging that the Department's policy of racially segregating inmates in reception center cells was a violation under the Equal Protection Clause of the United States Constitution. In Johnson v. California, the United States Supreme Court did not rule on the constitutionality of the Department's housing practices, but rather ruled that anytime a racial classification is at issue, the "strict scrutiny" standard should be applied. Application of this new standard requires CDCR officials to ensure that the policy is narrowly tailored to address necessities of prison security and discipline. The Department entered into a settlement agreement that stipulates that CDCR will no longer use race as the sole determining factor in housing at reception centers and general population institutions.

**Comment B:** Commenter contends that such phrases as "individual case factors" and "objective criteria" are not clear, and would be underground regulations if not properly promulgated through the Office of Administrative Law (OAL). In addition, any coding used to identify inmate eligibility should be published in a Notice of Change to Regulations (NCR) and approved through the OAL.

**Accommodation:** None.

**Response B:** The Department disagrees that any of the language included in the proposed regulation is unclear. Each inmate Central File contains very specific information about that inmate that will assist a caseworker in making a decision about their eligibility to be racially housed. The decision as to the extent to which an inmate can be racially housed cannot be a subjective one, or be made on any subjective process or information. The proposed coding to be used to identify inmate eligibility has been published in a NCR.

**Comment C:** Commenter states that the Department has identified numerous prison disruptive groups who cannot cell together due to security concerns. This would leave a small minority of inmates not being treated equally, because they will always be the group to become integrated.

**Accommodation:** None.

**Response C:** The Department contends that inmates who participate in prison disruptive groups or gangs are usually housed together in select secure facilities. Such inmates tend to have higher classification scores, reflective of a continuing pattern of disruptive behavior and a refusal to program positively as they serve their sentence. The case factors of such inmates would likely preclude them from being eligible to participate in the integrated housing plan. It is the Department's goal to ensure that such disruptive inmates will in time become the small minority of inmates throughout the prison system.

The Department is faced with numerous priorities, not the least of which is the implementation of Assembly Bill 900. The successful implementation of racial integration or gang strategies should not be viewed as separate from this critical priority. In fact, just as gang suppression efforts are critical to the success of racial integration, so too is the ability of the Department to integrate its population in an effort to increase the rehabilitation of incarcerated offenders.

The Department cannot provide rehabilitation to inmates in an environment where they, along with staff, are threatened by violence and racial pressures, exacerbated by the influence of gangs. In recognition that the ultimate objective of achieving a safe prison environment is dependent upon the success of racial integration and gang suppression efforts, the

Department has decided that racial integration will be achieved in a thoughtful and measured manner, and “lessons learned” by other states who have successfully integrated. In addition, the Department included input from national experts in the fields of gangs and prison integration. Efforts will be constantly monitored for appropriate outcomes, with a primary emphasis on staff and inmate safety.

**Comment D:** Commenter states that the Department has not determined how cellmates will be affected during lockdown or modified program when one race or group of inmates cannot leave the cell.

**Accommodation:** None.

**Response D:** The Department contends that each institution will determine the lockdown program needed in accordance with the seriousness of the incident that caused the lockdown. Generally, most lockdowns occur, and will continue to occur, in those facilities that principally house inmates who participate in prison disruptive groups where an integrated housing plan is more difficult to achieve due to precluding case factors.

**Comment E:** Commenter states that any inmate who refuses to integrate should only be punished once, because failure to integrate is not a crime. In addition, under no circumstance is placement in a segregated housing unit appropriate for refusing to integrate.

**Accommodation:** None.

**Response E:** The Department contends that an inmate that refuses to be housed in what has been determined to be appropriate housing, after careful consideration of all case factors, will be subject to the disciplinary process with the potential to be rehoused in alternative and more restrictive housing. Refusal to participate will result in the issuance of a Rules Violation Report (RVR) for Conduct, Refusing to Accept Assigned Housing, for the specific act of Willfully Obstructing, Delaying, or Resisting a Peace Officer in the Performance of Their Duty, a Division D offense. The inmate may elect to participate in the integrated housing plan at any time during this process. The Department further contends that an inmate that is deemed eligible to participate in any program, yet elects to not do so, will be held accountable for being a disruptive influence. Since most inmates will be eligible to be paroled back into the community, the Department has an interest in fostering racial acceptance in its inmate population.

**Comment F:** Commenter questions whether the refusal to integrate should be an Administrative RVR rather than a Serious RVR.

**Accommodation:** None.

**Response F:** The Department contends that any disruptive behavior is to be taken seriously. The Department believes that in time, the integrated housing plan will be successful in contributing to the rehabilitation of the inmates in its charge.

**Comment G:** Commenter states that each institution should poll its population regarding integration, and if an inmate doesn’t voluntarily acquiesce to integration, they shouldn’t be forced into it.

**Accommodation:** None.

**Response G:** See Commenter #1, Response A.

## **Commenter #5**

**Comment A:** Commenter states that inmates will be punished for refusing any housing assignment. CDCR has already created a racially tense environment by the way it has been running its prisons. In-cell violence will likely increase. The Department has a duty to provide a safe living environment. No one should be forced to live with someone they don't want to.

**Accommodation:** None.

**Response A:** See Commenter #1, Response A.

**Comment B:** Commenter states that the proposed policy should be modified to remove any punishment for refusing a cell mate.

**Accommodation:** None.

**Response B:** See Commenter #1, Response A, and Commenter #4, Response F.

#### **Commenter #6**

**Comment A:** Commenter states that he is an older white inmate, and under no circumstance will he live with anyone of a race other than his own.

**Accommodation:** None.

**Response A:** See Commenter #1, Response A.

#### **Commenter #7**

**Comment A:** Commenter states that prisoners should not be double celled at all, let alone forced to live in gyms and in dayrooms, and certainly not with someone of a different race.

**Accommodation:** None.

**Response A:** See Commenter #1, Response A.

**Comment B:** Commenter states that it is not mandated that CDCR implement integrated housing.

**Accommodation:** None.

**Response B:** See Commenter #1, Response A, and Commenter #4, Response A.

**Comment C:** Commenter states that there are already enormous problems in the prison system about race mixing, and race mixing inside cells will only lead to more violence.

**Accommodation:** None.

**Response C:** See Commenter #1, Response A, and Commenter #4, Response G.

**Comment D:** Commenter states that only prisoners who want to live with members of another race should be permitted to do so.

**Accommodation:** None.

**Response D:** See Commenter #4, Response C.

**Comment E:** Commenter states that this policy is too broad, as "not housing only by race" does not translate into "all races must now integrate."

**Accommodation:** none.

**Response E:** See commenter #2, Response A.

#### **Commenter #8**

**Comment A:** Commenter states that this regulation will be the cause of the biggest race war this state has ever seen.

**Accommodation:** None.

**Response A:** See Commenter #1, Response A, and Comment #4, Responses C through E.

**Comment B:** Commenter states that the Department is lying when it says it will not force integration, and that the mere Obstruction of a Peace Officer is insufficient a charge to put an inmate in a SHU.

**Accommodation:** None.

**Response B:** See Commenter #4, Responses E and F.

**Comment C:** Commenter states that subsection 3269(f) regarding the imposition of disciplinary restrictions is cruel and vicious, sure to cause problems with staff and inmates alike.

**Accommodation:** None.

**Response C:** See commenter #4, Response F.

#### **Commenter #9**

**Comment A:** Commenter states that this rule change should allow inmates to request to be housed with members of their own race, without punishing them for wanting to feel comfortable in their own home.

**Accommodation:** None.

**Response A:** See Commenter #1, Response A.

#### **Commenter #10**

**Comment A:** Commenter states that the proposed housing plan would not only upset the status quo, but would promote violence both in the prisons and in the civilian community.

**Accommodation:** None.

**Response A:** See Commenter #1, Response A.

**Comment B:** Commenter states that bring forced to live with someone of another race will promote violence.

**Accommodation:** None.

**Response B:** See Commenter #2, Response A.